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IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Initial reports submitted by States parties to the Covenant, in accordance with Council resolution 1988 (LX), concerning rights covered by articles 6-9

ZAIRE

[3 February 1987]

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INTRODUCTION

In Zaire, the right of peoples to self-determination is established in particular in article 10 of the Constitution, which confers on the State sole ownership of Zaire's soil and subsoil. This is a means of asserting the sovereignty of the State, and thus of the people, over the resources of the soil and the subsoil. Pursuant to this constitutional provision, the Land Act of July 1973, as revised in 1982, defines the conditions for concessions which may be enjoyed by private individuals.

It will be recalled that, under article 31 of the Constitution, every foreigner present in the territory of the Republic enjoys the same protection accorded to persons and property as nationals, with the exceptions determined by law.

Under the Act relating to the General Property Régime, the Land and Real Estate Régime and the Guarantee Régime, only Zairians can own dwellings in perpetuity; the right of foreigners is restricted to 30 years but may be renewed. This is the only difference.

In any event, in Zaire there is no distinction or discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, wealth or birth, etc., in the enjoyment of the rights guaranteed to private individuals. In Zaire, men and women have equal rights; they are equal in the eyes of the law and have the right to equal protection of the law under article 12 of the Constitution.

Similarly, men and women cannot be the object of a discriminatory measure. In many cases, however, equality is not absolute. Thus, under the Names Act, only the father can give his surname to his children. Similarly, married women must request their husband's permission to work outside the home. However, if a refusal is judged to be unwarranted, the wife may bring the matter before a court (new Family Code). This also applies if the wife wishes to open an individual bank account.

ARTICLE 6: RIGHT TO WORK

1. THE RIGHT OF EVERYONE TO THE OPPORTUNITY TO GAIN HIS LIVING BY WORK WHICH HE FREELY CHOOSES OR ACCEPTS, AND GUARANTEES AGAINST DISCRIMINATION IN ACCESS TO EMPLOYMENT

Under the provisions of article 27 of the Constitution and article 2 of the Labour Code, "every Zairian shall have the right and the duty to contribute, through his work, to the construction and the prosperity of the Nation.

No one may be jeopardized in his work because of his origins, sex or beliefs."

Thus, for every Zairian, work is not only a right but also a duty. It is an obligation for all those who are not prevented from working by age or physical or mental handicap. However, under article 14 (2) and (3) of the Constitution, no one may be compelled to perform labour against his will. The provisions of the same article prohibit slavery.

Under article 30 of the Constitution, however, this prohibition does not apply to military service, compulsory civic service or the voluntary performance of collective work in the public interest.

Similarly, labour or services required in cases of force majeure, i.e. in case of war, calamity, threatened catastrophe, prevention of famine, natural disasters or epidemics and, in general, any other circumstances endangering or capable of endangering human life or the normal conditions of existence of the entire population or any part thereof cannot be considered as compulsory under the terms of article 2 of the Labour Code.

Similarly, work or services required of an individual as a result of a sentence pronounced by a court of law, on condition that such work or service is carried out under the supervision and control of the competent public authorities and that the said individual is not made to work for any private employer or private corporation, do not constitute compulsory labour in accordance with the provisions of article 2 mentioned above.

All the forms of compulsory labour mentioned above shall be carried out only for objectives of public concern and as an exceptional and provisional measure, subject to the conditions and guarantees laid down in an ordinance of the President of the Republic made on the advice of the National Labour Council.

While guaranteeing the right to work, the authors of the Constitution and the legislators have also asserted the principle of free choice or acceptance of work.

Work must be performed without discrimination of any kind since the Constitution in article 12 proclaims the principle of the equality of all Zairians. The provision is worded as follows:

> "All Zairians are equal before the law and have the right to equal protection by the law.
>
> No Zairian may, in respect of education, access to public office or any other matter, be the object of a discriminatory measure, whether resulting from the law or an act of the Executive, by reason of his religion, racial or ethnic origin, sex, place of birth or residence."

As regards the exercise of the right to work, mention has already been made of the provisions of article 27 of the Constitution and article 2 of the Labour Code which proclaim the principle of non-discrimination both as between Zairians and towards nationals of other countries. Zaire protects its own workforce and reserves access to certain functions or activities to its own nationals. This situation is in accordance with the provisions of article 31 of the Constitution, which states that every foreigner present in the territory of the Republic enjoys the same protection accorded to persons and property as nationals, with the exceptions determined by law. Similarly, the law specifies the conditions under which foreigners may enjoy the same rights as Zairians.

2. POLICIES AND TECHNIQUES TO ACHIEVE STEADY ECONOMIC, SOCIAL AND CULTURAL DEVELOPMENT AND FULL AND PRODUCTIVE EMPLOYMENT UNDER CONDITIONS SAFEGUARDING FUNDAMENTAL POLITICAL AND ECONOMIC FREEDOMS TO THE INDIVIDUAL

In order to convey a clear understanding of Zaire's basic concerns as regards economic, social and cultural matters, we must first of all recall the provisions of the Constitution which are in addition specified in the N'sele Manifesto; the major effort being made to develop the economy and thus improve the living conditions of the population of Zaire should also be mentioned. As regards the cultural effort, the whole world now knows Zaire's contribution to universal civilization.

This contribution by Zaire is known as the "authenticity" policy. The efforts undertaken by Zaire to prepare the way for the construction of a black African cultural community should also be noted.

The preamble to the Constitution proclaims the desire "to assure the material well-being of each Zairian and to create conditions favourable to the moral and spiritual growth of all Zairians."

Similarly, the concern to construct a genuine foundation enabling the people to exercise their fundamental and democratic freedoms on the one hand and the effort to seek the social and economic well-being of the people on the other is also asserted in article 1 of the Constitution.

The document commonly known as the N'sele Manifesto, from the name of the place where it was proclaimed, spells out in detail the ways and means of achieving social well-being through economic development. The programme contained in the statement made by the President of the Republic at the ceremony during which he took the constitutional oath in December 1984 following the presidential elections, once again expresses the same desire to ensure social well-being, by developing a number of sectors considered to have high priority, such as education, housing, health, energy, drinking water, transport and communications, postal services, the economy, etc. In short, the President of the Republic has decided to devote his new seven-year mandate entirely to the service of social affairs which are closely linked to development and economic growth in the sectors referred to above. This is why his seven-year term of office has rightly been described as the "seven-year term for social affairs". The five-year plan decided on is also directed at achieving these same overall objectives.

As has already been said, the cultural dimension of Zaire's efforts for universal civilization is too well known, certainly throughout Africa, to require further elaboration in the context of this report. The "authenticity" policy and the search for a black African identity transcending State frontiers have contributed to the awakening and new awareness of all Africans, who are invited to discover and use a new "ego" constituting a very powerful factor of union, namely, the ethno-cultural element which is deeper and more all-embracing than the aspect of skin colour alone.

With a view to ensuring a policy of fully productive employment, Zaire pursues the establishment of the economic liberalism already introduced in parallel with an education policy and technical and vocational training.

In seeking the definitive recovery of its economy, Zaire has opted for an economic liberalism which will above all take the form of liberalism in production and will not be a purely commercial variety with its risk of reducing the country to a mere consumer market importing products from other countries.

The free enterprise economy makes it possible to encourage initiatives and thus improve return and performance. In this context it was decided to privatize a number of public or semi-public enterprises considered to be less productive.

The different aspects of education and technical and vocational training will be developed in the next section devoted to the organization of employment.

3. MEASURES FOR ORGANIZATION OF THE EMPLOYMENT MARKET AND USE OF MANPOWER

Under article 5 of the Labour Code, any public or private employer has an obligation to provide occupational training, further or advanced training and retraining for the workers in his employment.

For this purpose, he may use the facilities placed at his disposal throughout the territory of the Republic by the National Vocational Preparation Institute established under part XIII of the Labour Code, to assist him in organizing and pursuing his activities for the occupational training, further or advanced training or retraining of the workers in his employment.

Occupational training continues after a career has begun. It enables the worker to become trained and offers him the prospect of improving his status by acquiring higher professional qualifications. It enables companies to recruit the foremen and technicians they need to improve their efficiency. Finally, it enables skilled workers to keep abreast of new techniques.

As stated above, it was to meet these needs that the National Vocational Preparation Institute was established and given legal status.

The Institute, associating the interests and responsibilities of the State, employers and workers, is responsible for collaborating in the promotion, creation and implementation of existing or new means required for the occupational skill of the active population of the nation and the co-ordination of their operations.

Its action is intended in particular for the vocational training and promotion of trade efficiency of workers in employment, the accelerated training of new adult workers, on-the-job apprenticeship, the vocational training and guidance of persons having a general basic education and the occupational adaptation of persons who have received technical or occupational training in an educational establishment.

Its action is also intended to facilitate the modification of the vocational skills of workers who have to change their occupation or trade and the vocational rehabilitation of workers who are vocationally handicapped (article 181 of the Labour Code).

The National Vocational Preparation Institute is also responsible for:

(a) Establishing and maintaining co-operation between all the bodies concerned with technical and vocational training, for example in collecting and distributing all the necessary information concerning training possibilities for each occupation.

(b) Collaborating in designating the occupations for which standards of skill are considered to be necessary or desirable, in prescribing such standards, in fixing the nature and degree of the occupational skills and in organizing the examinations to ascertain them.

(c) Co-operating with the public services and occupational associations concerned in establishing a list of trades and occupations and in prescribing the occupational skills required for each level of employment and each trade or profession.

(d) Giving the benefit of its experience to the National Labour Service on the problems of research into employment market trends, the assessment of present and future manpower requirements at the various levels of classification of occupations and the placement of workers.

(e) Promoting an adequate system of vocational guidance and selection and participating in its functioning.

(f) Collaborating with the Ministry of National Education and with all the occupational and cultural associations concerned with vocational preparation activities (article 182 of the Labour Code).

The assets of the National Vocational Preparation Institute are composed of:

(a) An annual State subsidy, covering at least 50 per cent of the Institute's annual budget.

(b) Quarterly dues from employers.

(c) Exceptional income for special services, inter alia, for the supply of teaching materials, the amount to be fixed by agreement between the Institute and the employers.

(d) Gifts, donations and legacies (article 185 of the Labour Code).

Besides the vocational guidance and training programmes described at length above, mention should also be made of apprenticeships, the conditions for which are set forth in articles 6 and 7 of the Labour Code.

The provisions of articles 48 to 64 of the Code protect workers against arbitrary action by employers.

The provisions concerned state the conditions under which a contract of employment may be terminated, the period of notice given to the parties and the compensation payable, if any.

Article 64 prohibits mass lay-offs; lay-offs may only take place with prior authorization from the Minister of Labour and Social Welfare. The same article sets forth the conditions and procedures for mass lay-offs.

The protection of workers is provided for in a very general way by articles 153 to 179 of the Labour Code. These articles organize the Labour Administrative Service and the Inspectorate of Labour, on the one hand, and the National Employment Service and National Labour Council on the other.

Labour Administrative Service and Inspectorate of Labour

The Labour Administrative Service is responsible, under the authority of the Minister of Labour and Social Welfare, for research and planning in the field of labour, employment, promotion of occupational proficiency and social welfare, and acting in an advisory, co-ordinating and supervisory capacity.

Its tasks include the following:

(1) Drawing up all draft Bills and regulations in the field of workers' conditions, industrial relations, the employment and placement of workers, vocational training and advanced training and social welfare;

(2) Advising, co-ordinating and supervising the services or bodies collaborating in the administration of labour and social-welfare laws and regulations;

(3) Gathering and keeping up to date a sum of statistical data respecting conditions of employment, conditions of work and social-welfare operations;

(4) Following up relations with other States and international organizations with respect to matters concerning labour, employment, promotion of occupational proficiency and social welfare;

(5) Being responsible for the administration of the laws and regulations respecting labour, social welfare and employment;

(6) Giving information to employers and workers by way of advice and recommendations;

(7) Ensuring, in collaboration with the authorities and bodies concerned, the optimum organization of the employment market as an integral part of the national programme for ensuring and maintaining full employment.

For the purpose of achieving its objectives, the Labour Administrative Service has services operating at both the central and local levels, in accordance with article 154 of the Labour Code.

Labour is also protected by a permanent inspection system, applied by the Inspectorate of Labour. The Inspectorate's overall task is to promote the harmonious development of relations between employers and workers and to contribute to respect for social justice (article 160, (1) of the Labour Code).

The specific tasks of the Inspectorate of Labour are set forth in the second paragraph of that article.

The general rules for the organization and protection of employment in Zaire were supplemented by the establishment of the National Employment Service and the National Labour Council.

National Employment Service and National Labour Council

The essential task of the National Employment Service, which is composed of a central and regional management, is to "achieve the optimum organization of the employment market". To this end, it has the following specific responsibilities:

(a) Research into and analysis of all information respecting the employment market situation and probable trends throughout the country and also in the various branches of economic activities, occupations or regions;

(b) Assisting workers in finding suitable employment and employers to recruit workers who meet the requirements of the undertakings;

(c) Taking suitable steps to facilitate the occupational and geographic fluidity of manpower;

(d) Endorsing contracts of apprenticeship and employment;

(e) Controlling alien manpower;

(f) Providing all other kinds of assistance to unemployed workers.

The National Labour Council is an advisory body established under the Minister of Labour and Social Welfare, who is its Chairman. It has an equal number of representatives of the State, the workers and the employers.

The Council has the following general tasks:

(1) To study all problems concerning labour, manpower and social welfare;

(2) To study the elements which may serve as a basis for fixing the minimum inter-occupational wage and its economic effects;

(3) To give advice and make recommendations and resolutions on future regulations concerning these matters.

4. INFORMATION RELATING TO THE LEVEL OF EMPLOYMENT AND DIFFICULTIES

Problems relating to employment and its corollary, possible unemployment, are essentially connected with an increase in and the creation of jobs on the one hand, and with the size of the country's population, on the other.

It should be borne in mind, first of all, that Zaire, like the majority of countries in the world, belongs to the category of so-called developing countries in addition to being a product of decolonization period. This adequately describes the situation of the country, which is young and whose economy is turned towards the exterior like that of the majority of other third world countries.

Colonization developed only a few vital sectors in order to meet its requirements, for instance mines, public administration and education, trade and agriculture generally remaining at an embryonic stage.

Since the country's accession to independence, it has been confronted with serious difficulties, such as inadequacy of local infrastructure, since the entire economy was directed towards and for the sole benefit of that of the former metropolis for which it served as support.

This brief description gives an idea of the starting-point of the country which, at the dawn of its independence, had only a very limited employment market. When, under the influence of various factors, the rural population began its exodus towards the urban centres, this situation caused some unemployment in addition to the fact that there was no parallel establishment of new major undertakings capable of providing employment for the additional manpower arriving from the countryside.

The difficulties also grew as a result of the population explosion that took place in the country. In less than 25 years, the population increased from 18 million to about 36 million inhabitants. The economy, which is virtually dependedent on the outside world from which it expects both capital and other resources capable of promoting its development, has also suffered from the effects of the current world economic recession. An inevitable consequence has been stagnation, which hardly makes it possible to absorb the unemployment or to occupy a large number of workers.

Difficulties in the transportation and communications fields and their obsolescent equipment in a vast country, which is 80 times the size of Belgium and half of whose population is engaged in family-type agriculture, do not make it possible for work and, therefore social progress, to be carried out in entirely favourable conditions. Difficulties resulting from financial and exchange-rate problems also have a significant influence on the employment market.

ARTICLE 7: RIGHT TO JUST AND FAVOURABLE CONDITIONS OF WORK

A. REMUNERATION

The right to remuneration constitutes the counterpart of the services provided for the benefit of the employer. The principles and conditions for determining remuneration are set forth in articles 72 to 95 of the Labour Code; the same is true with regard to the bodies that participate in such determination.

1. RIGHT TO FAIR REMUNERATION

While, as has been pointed out above, remuneration is the counterpart of work done, there should be some equation between the two elements. In other words, remuneration should be a function of the nature of the service furnished; remuneration should also be equitable. Various jobs are the subject of classifications made by competent bodies, the organization of which will be mentioned below.

With regard to remuneration, a fundamental principle is that equal remuneration is to be given to all persons who perform the same kind of work. This principle is embodied in article 72 of the Labour Code, which states: "In cases of equality of type of work, skill and output, equal remuneration shall be given to all workers irrespective of their origin, sex and age".

As can be seen, this provision also proclaims another important principle, namely non-discrimination among persons possessing the same skills and producing an equal output. This principle is applied without regard to origin, sex or age. It is the simple application of the constitutional principle of equality among citizens. The very general terms in which this principle of non-discrimination in respect of remuneration is couched show that it clearly applies also to foreign workers.

Numerous judicial decisions affirm the right to equitable remuneration, in particular that of just compensation where a worker has his rights disregarded or is prejudiced. 1/

2. METHOD OF FIXING REMUNERATION

An ordinance of the president of the Republic, made on a recommendation of the Minister of Labour and Social Welfare on the advice of the National Labour Council, fixes wage zones, inter-occupational minimum wages, minimum family allowances and, in the absence of a collective agreement or of any relevant provision in a collective agreement, the minimum wages for each occupational category (article 73 of the Labour Code).

The minimum inter-occupational wages in force in the provinces are examined each year by the governor of the province and the competent labour inspector for the region and their levels are compared with those of consumer prices.

The study is carried out in collaboration with the representatives of the workers' and employers' occupational associations (op. cit., article 74).

The amount of the remuneration is freely determined by the parties, but it cannot be less than the minimum rates fixed by presidential ordinance or by the relevant collective agreement (article 75).

The task of the National Prices and Wages Commission is to lay down the rules for establishing the general consumer price index and to transmit to the competent public authorities, either on its own initiative or at the request of the said authorities, any suggestions and proposals concerning problems relating to prices and wages (article 1 of Presidential Ordinance No. 761230 of 16 September 1976).

The Commission, in respect of wages, is entrusted especially with the task of making a periodic evaluation of the relationship between the general consumer price index and the level of wages; it also gives its opinion on draft presidential ordinances fixing the initial salaries of State agents; it is also entrusted with the task of submitting to the Minister for the Civil Service any proposal which it deems appropriate concerning the determination of such remuneration; its advice is also required for all draft presidential ordinances fixing minimum wages.

This Commission also gives its advice on all draft wage agreements; it proposes on its own initiative any measures relating to the preparation and implementation of a consistent policy on prices and wages (article 2 of the Labour Code).

The Commission comprises three representatives from the National Union of Zairian Workers and three representatives from the National Association of Zairian Undertakings; the other services are represented by one person only (op. cit., article 3).

The Commission meets on convocation by its Chairman as often as necessary and at least once each quarter (op. cit., article 10).

The representatives of the National Union of Zairian Workers and those of the National Association of Zairian Undertakings have eight votes each, while those of the public administrations have only three votes each.

3. INFORMATION REGARDING COMPONENTS OF REMUNERATION OTHER THAN REGULAR WAGES

In many major commercial undertakings, the workers receive a bonus which is paid at the end of the financial year: it is a sort of participation by the workers in the profits of the undertaking.

For all workers, in addition to wages, a number of expenses are covered through various benefits. A given amount is thus calculated for housing, medical expenses and pharmaceuticals as well as for family allocations. Persons who work for a full year in an undertaking receive a bonus in addition to their remuneration.

In certain regions such as Shaba, a cost of living allowance is given to the workers.

Workers who are obliged to work on holidays or to perform additional services receive by way of a bonus an amount equivalent to twice their daily wages. In general, the regulations of the undertaking or the collective agreements drawn up by the competent bodies, as has already been indicated, determine all the other elements of remuneration.

A worker who because of the exigencies of the service is unable to take leave receives a compensatory allowance. He is also entitled to other allowances to enable him to travel to his place of work, and to the place where he will actually spend his leave (articles 121 et. seq.).

4. STATISTICAL DATA SHOWING THE EVOLUTION OF LEVELS OF REMUNERATION

For purely illustrative purposes, the information given below indicates the evolution of the level of remuneration of magistrates at the beginning of their tenure during the period considered.

1966	1968	1984
150 zaires a month	500 zaires a month	6,240 zaires a month

1987
30,000 zaires a month

It can be seen that in absolute terms the remuneration of judges has greatly increased, which reflects the special concern shown by the country's authorities in favour of the judges, given the importance of their social mission. At the time when this report was prepared, proposals for very substantial increases in the salaries of the members of the judiciary were under consideration.

The judiciary of Zaire therefore actually receives a remuneration which would be enviable were it not for the erosion, in the value of the currency which causes a steady rise in the price of foodstuffs and, hence, in the cost of living in general. This comment is also valid for the remuneration of staff in all sectors of activity.

5 PROPOSALS DESIGNED TO ENSURE RESPECT FOR THE RIGHT TO EQUAL PAY FOR WORK OF EQUAL VALUE

Information on this point has already been given under item 1 of the analysis of article 7 under consideration.

6. DIFFICULTIES ENCOUNTERED IN ENSURING TO ALL WORKERS FAIR REMUNERATION PROVIDING A DECENT LIVING FOR THEMSELVES AND THEIR FAMILIES

While the country's authorities spare no effort in seeking to improve constantly the conditions of remuneration of all workers, as a result of several imponderables these good intentions are unfortunately not always crowned with success. In a country where the entire burden of development in all sectors of life is borne in practice by the State, the latter whose financial resources are necessarily limited, cannot maintain such an effort in every area without difficulty. Futhermore, with the increase in population, the State is obliged to concentrate its efforts to a greater extent on sectors such as the construction of new hospitals, maternity clinics, schools, the purchase of medicines, etc.

The declining value of the currency has also had, as has been pointed out, a negative influence on the worker's purchasing power. As a result of the constant rise in the cost of living, which is one of its consequences, after only two or three months, whatever the rate of increase in their remuneration, the worker's purchasing power will continue to deteriorate. It is likely that such a situation will be prolonged so long as the world economy itself, which influences the economic situation of the majority of developing countries, does not recover and improve significantly.

B. SAFE AND HEALTHY WORKING CONDITIONS

In Zaire, the general framework and health conditions in which work is performed are covered in articles 138 to 151 of the Labour Code and, of course, in the articles relating to labour administration which have already been mentioned under item 3 of the comments on the information provided under article 6. The second set of measures is covered in articles 155 to 168 of the Labour Code.

Under article 138 of the Labour Code, "Every establishment shall be maintained in a constant state of cleanliness, and the conditions as to

hygiene and safety necessary for the workers' health shall be observed therein. The premises shall be installed in such a manner as to guarantee the workers' safety".

Health and safety conditions in the workplace are governed by orders of the Minister of Labour. The orders specify the cases and circumstances in which a labour inspector carries out his supervisory functions regarding the general conditions of work (article 139).

Where working conditions exist in establishments that might result in industrial accidents or occupational diseases, the competent Minister may institute health and safety committees by means of an order (article 139 bis).

Where working conditions endangering the workers' safety or health but not covered by the orders referred to above are found to exist, the employer is given notice to remedy the situation (article 142).

The employer is obliged to notify the National Social Security Institute, which is responsible for managing labour administration as a whole throughout the national territory, of all industrial accidents or occupational diseases occurring in the undertaking.

Under article 144 of the Labour Code, every undertaking or establishment has to provide a medical or health service for its workers. The various benefits given to cover the medical expenses of the staff are, of course, no longer provided if the employer himself has organized a medical or health service.

As already pointed out, health and safety conditions in the workplace are supplemented by, and should also form an integral part of, arrangements made to ensure the administration and inspection of work performed by various bodies operating at the central and regional levels. Mention should also be made of the Departmental Order No. 13 of 4 August 1972, amended by Order No. 70/77 of 5 May 1977 relating to health in the workplace. Safety conditions in the workplace are also governed by Order No. 17/73 of 6 February 1973.

While it is easy to check health and safety conditions in establishments situated either in the capital or in the chief towns of regions or in those close to such places, the country's vast size does not make it possible to exercise strict control over establishments or undertakings located in remote areas of the hinterland, primarily because of communications difficulties.

Although it has not been possible to have precise statistics on industrial accidents and occupational diseases in respect of which information might be provided subsequently, it can, however, be stated that in Zaire, the frequency with which industrial accidents or occupational diseases occur in establishments is not such as to constitute a serious danger for the health and safety of workers. Other than in the mining sector, there are virtually no dangerous undertakings in the country. Even in this sector, statistical data reveal nothing significant.

C. EQUAL OPPORTUNITY FOR PROMOTION

Promotion in the workplace to an appropriate higher category occurs solely on the basis of each worker's seniority and occupational skills. No account is taken of religious, ethnic or other considerations.

This is an application of the principle of equality proclaimed by article 12 of the Constitution. This principle applies to both men and women: as they are in the same circumstances, all Zairians should be treated in the same manner.

This principle of equality must, however, be interpreted in a reasonable manner; it does not preclude the possibility that, because of their nature, certain functions are primarily or exclusively reserved for women or for men, as envisaged in the Labour Code.

D. REST, LEISURE, LIMITATION OF WORKING HOURS, AND HOLIDAYS WITH PAY

1. REST

All the personnel employed in every public or private establishment, including educational establishments or charitable or benevolent institutions, is entitled to a rest period of at least 24 consecutive hours every seven days.

As far as possible, the said rest period has to be granted at the same time to the entire staff of the establishment. As a rule it falls on Sundays (article 102 of the Labour Code).

Employers cannot, therefore, employ workers or apprentices on Sundays.

Provided that a compensatory rest period of 24 consecutive hours is granted to the staff during the same week or the following week, workers may be employed on Sundays in establishments belonging to the following categories:

(1) Production of foodstuffs intended for immediate consumption;

(2) Shops selling natural flowers;

(3) Hotels, restaurants and bars;

(4) Boarding houses, boarding establishments and student homes;

(5) Hospitals, almshouses, asylums, retirement homes, sanatoriums, clinics, pharmacies;

(6) Bathing and sports establishments;

(7) Newspaper, news and entertainment enterprises, museums and exhibits;

(8) Vehicle rental enterprises;

(9) Water supply undertakings;

(10) Undertakings producing, converting and transmitting electricity and power;

(11) Retail petrol and diesel fuel enterprises;

(12) Transport and handling enterprises;

(13) Industries handling highly perishable goods;

(14) Industries in which any work stoppage would entail the loss or deterioration of the product in process of manufacture;

(15) Telegraph and telephone enterprises;

(16) Agricultural or industrial enterprises, as regards staff strictly necessary to care for animals;

(17) Food shops and general stores;

(18) Boat repair and maintenance enterprises;

(19) Enterprises or establishments in which work is performed in shifts.

In establishments belonging to these categories, compensatory rest periods may be granted in shifts. The choice of the compensatory rest day is left to the employer, after consultation with the elected workers' delegation, as appropriate (Ministerial Order No. 68/12 of 17 May 1968).

Collective rest days and hours allowed have to be posted in the workplace of the staff concerned and communicated to the competent labour inspector for the region.

Where the rest period is not allowed collectively, the employer has to mention in a register, which is constantly updated, the names of the workers to whom special rules apply, indicating the rules concerned (op.cit., article 12).

In agricultural undertakings subject to the influence of weather, staff may be employed on Sundays during the peak production period, for a maximum of 12 times a year, subject to a corresponding compensatory rest period, granted in the quarter following the month in which that option is exercised (op.cit., article 5).

For staff employed in the operation of engines, in the cleaning of premises and, in general, in maintenance work of all kinds which needs to be performed on the rest day of the other workers, work is authorized on Sundays for half a day, subject to a compensatory rest period of 24 consecutive hours to be granted during the week.

In this case as well, the collective rest days and hours are fixed by the employer, after consultation with an elected workers' delegation, where appropriate.

They have to be posted in the workplace of the staff concerned and communicated to the competent labour inspector for the region.

Where the rest period is not allowed collectively, the employer, as in the case of establishments belonging to the categories listed above, has to mention on a register which is constantly updated the names of the workers to whom the special rules apply (op.cit., articles 6 and 12).

Security guards and watchmen are authorized to work on Sundays, provided that they are allowed during the week a compensatory rest period of 24 consecutive hours.

Household staff may perform work on Sundays, subject to a compensatory rest period given on another day of the week (op.cit., article 7).

Work may also be authorized exceptionally on Sundays where it is established that allowing the staff to have the weekly rest period on Sunday would be harmful to the public interest or jeopardize the normal operation of an establishment.

In this case, a compensatory rest period has to be given in shifts or collectively on one day of that week or of the following week.

To that end, the head of the establishment has to obtain authorization from the inspector-general for labour. The authorization request has to indicate the circumstances warranting the performance of work on Sunday, the date, duration, number of workers involved and measures envisaged respecting the compensatory rest period (op.cit., article 8).

Where an accident has occurred or is imminent and in the case of force majeure or urgent work to be performed at the premises, but solely to the extent required to ensure that no major obstacle hampers the normal functioning of the enterprise, the staff necessary for the performance of such work may be employed on the weekly day of rest.

To prevent the loss of perishable goods, to the extent that the employer is unable to use other means, the staff may be employed on the weekly day of rest for a maximum of 12 times a year.

The hours of work done in these conditions do not give the worker entitlement to a compensatory rest period but are regarded rather as overtime and remunerated as such.

The head of the establishment merely has to notify the competent labour inspector for the region immediately, indicating the circumstances warranting work on the weekly rest day, the date, duration and number of workers involved (op.cit., articles 9 and 10).

2. REASONABLE LIMITS ON WORKING HOURS

In all public or private establishments, including educational establishments and charitable or benevolent institutions, the statutory hours of work of salary and wage earners, irrespective of sex and age, may not exceed 8 hours a day or 48 hours a week.

Hours worked in excess of the statutory hours are considered overtime and give entitlement to overtime rates (article 100 of the Labour Code).

All these matters are also governed by Ministerial Order No. 68/II of 17 May 1968 constituting regulations concerning the hours of work and the provisions respecting overtime pay.

3. PERIODIC HOLIDAYS WITH PAY

The employer shall be bound to grant annual vacation leave to the worker. It shall be unlawful for the worker to waive his right to annual vacation leave, which shall commence on the expiry of one year's service completed with the same employer or the employer substituted for him.

The date of the vacation leave shall be fixed by mutual agreement, provided that the actual date of departure on leave shall not be later than six months following the date of commencement of entitlement to leave. The worker shall be entitled to postpone until a subsequent period not more than one half of the entire leave accrued in any given period of two years.

During the period of absence on paid vacation leave, the worker and his family shall be entitled to medical care. In the case of the leave being taken outside Zaire, the worker shall be entitled to reimbursement of the cost of any medical care he may have received (article 119 of the Labour Code).

The duration of the leave shall be at least one working day for every full month's service in the case of a worker over 18 years of age. It shall be at least one and a half working days for each full month of service in the case of a worker under 18 years of age. It shall be increased by one working day for every five years' service with the same employer or his replacement.

The services taken into consideration in calculating the duration of vacation leave shall include days worked, weekly rest, paid vacation leave, Sundays and statutory public holidays, as well as periods of suspension due to incapacity for work (up to a maximum of six months for each year of service, each year being considered separately); such limitations shall not apply to incapacity caused by an industrial accident or occupational disease.

Travel time shall not be included in the duration of the vacation leave.

Days of sickness falling within the leave period shall not be counted as days of leave under article 120 of the Labour Code.

During the entire duration of the leave period the worker shall be entitled to an allowance equal to the remuneration he was obtaining at the time of his departure on leave, the statutory cash equivalent of any benefit in kind furnished during actual service under the stipulations of the contract being paid, at the worker's request (except housing accommodation).

Where applicable, the amount of any commissions, bonuses, amounts paid for supplementary work and profit-sharing shall all be taken into account in fixing the leave allowance.

Family allowances shall be payable for the entire duration of the leave (article 121 of the Labour Code).

In the case of termination of contract, irrespective of when this happens, the leave shall be replaced by compensation calculated in the manner prescribed in article 121 above.

Apart from the above case, any agreement providing for the grant of compensation in lieu of leave shall be null and void (op. cit., article 123).

4. LEAVE FOR SPECIAL CIRCUMSTANCES

The worker shall be entitled to leave in the following circumstances:

1. Upon his marriage: two working days;

2. Upon his wife's confinement: two working days;

3. Upon the death of the spouse or of a relative by blood or marriage within the first degree: four working days;

4. Upon the marriage of a child: one working day;

5. Upon the death of a relative by blood or marriage to the second degree: two working days.

The above days shall not be deducted from the statutory minimum vacation leave.

Medical care shall be furnished during leave for special circumstances.

The employer shall be bound to pay leave allowances for not more than 12 working days per year by way of leave for special circumstances (op. cit., article 125).

With reference to the duration of vacation leave, reference may also be made to article 33 of the National Interprofessional Labour Collective Agreement, revised, of 19 March 1985. This Agreement was drawn up between the National Association of Zairian Undertakings and the National Union of Zairian Workers.

According to the provisions of this Agreement, the duration of vacation leave shall be at least one and a half working days for every full month's service for workers over 18 years of age and at least two working days for each full month of service for workers under 18 years of age. It shall be increased by two working days for every five years of service with the same employer or his replacement.

The worker shall also be entitled to leave in the following circumstances:

1. Upon his marriage: three working days;

2. Upon the death of the spouse or a relative by blood or marriage within the first degree, whether the father, mother or child of the worker: six working days;

3. Upon the death of the father or mother of the worker's spouse: four working days.

Items 2, 3 and 6, concerning the confinement of the wife, the marriage of a child of the worker and the death of a relative by blood or marriage to the second degree have not been included here for the simple reason that the advantages set out in them are the same as those recognized in article 125 of the Labour Code.

Compensation for statutory public holidays shall be paid in full.

In Zaire, days declared to be public holidays are specified by Decree No. 79-154 of 23 June 1979.

It may happen that on the occasion of a particular event a working day may be decreed a holiday by the authorities, either in the Republic as a whole or for a specific region or locality. Since this is not the doing of the worker, the decision to make a day a non-working day shall always specify that it will be paid.

As has already been said, monitoring of observance by all employers of the legal requirements guaranteeing the right to rest, to leisure and to vacation leave is not easy to effect in a country the size of a continent like Zaire, in addition to the fact that the labour administration has only a limited number of inspectors.

C. EQUAL OPPORTUNITY FOR PROMOTION

Promotion in employment to an appropriate higher category depends solely on the seniority and occupational skills of the person concerned. No account is taken of religious, ethnic or other considerations.

This is the application of the principle of equality set out in article 12 of the Constitution, and applying indiscriminately to men and women; in equal conditions, all Zairians must receive the same treatment.

However, this principle of equality must be interpreted reasonably; it does not preclude the possibility that, because of their nature, certain functions are primarily or exclusively reserved for men or for women.

ARTICLE 8: TRADE UNION RIGHTS

1. FREEDOM OF ASSOCIATION

Trade union rights and the conditions required for their exercise are the subject of articles 225 to 260 of the Labour Code. The general right of citizens to constitute associations or other groups is founded on article 26 of the Constitution.

Workers and employers, and all persons occupied in agriculture, shall be entitled to join together in associations (trade unions) having as their exclusive object the study, defence and development of their occupational interests and the social, economic and moral progress of their members (articles 224 and 230 of the Labour Code).

On condition that the procedures prescribed by the law are followed, no prior authorization shall be required to establish an occupational association (op.cit., article 225).

Employers' and workers' associations shall be entitled to draw up their own rules and administrative regulations, to elect freely their representatives, organize their management and activity and draw up their programme of action, subject to the provisions of the law (op.cit., article 226).

Every worker or employer, without any distinction whatsoever, may join any association he chooses or leave the same.

A member of an occupational institution may withdraw from the same at any time, irrespective of any stipulation to the contrary in its rules (op.cit., article 227).

The workers shall enjoy appropriate protection against all acts of discrimination liable to cause prejudice to trade union freedom as regards employment matters.

It is unlawful for any employer to:

(a) Make a worker's employment dependent on his membership or non-membership of any particular occupational organization;

(b) Dismiss a worker or prejudice him in any other way on account of his membership of an occupational association or his participation in trade union activities (op.cit., article 228).

Workers' and employers' associations shall abstain from any acts of interference in each others' affairs as regards their establishment, functioning and administration (op.cit., article 229).

A registered trade union shall be endowed with legal personality. It shall have the right to become owner, as defined in the ordinary law, for or without valuable consideration, of the movable or immovable property necessary for the promotion and defence of its members' interests. The buildings and their annexes, the furniture contained therein, books and teaching equipment required for meetings, libraries and training courses for the members of a registered trade union shall not be liable to seizure (op.cit., article 242).

The trade unions registered in accordance with the provisions of this Code may join together freely to promote and defend the interests of workers and employers.

They may join together in federations (op.cit., article 243). National federations or confederations shall have the right to form international trade unions or to be affiliated to them.

Duly registered federations of trade unions shall have the same rights and obligations as their member trade unions (op.cit., article 244).

The workers' and employers' organizations shall not be liable to liquidation or suspension by decision of the authorities (op.cit., article 246). Zairian law thus grants very considerable protection, and hence great stability, to occupational associations.

Where the contract of a worker elected to a permanent trade union post does not permit him to furnish the services associated with it, the contract shall be suspended during his entire mandate.

The worker shall be automatically reinstated in the undertaking on the expiry of this mandate. On reinstatement he shall benefit from any improvements granted to workers at his grade at the time of his election under article 16 of the national interprofessional collective agreement.

Prior notice of any dismissal of a trade union delegate envisaged by the employer or any change which would cause him to lose his status as a delegate must be given to the trade union delegation and to the National Union of Zairian Workers (UNTZA) (op.cit., article 18).

Zaire has gone from trade union pluralism to a single trade union known as the National Union of Zairian Workers. A first step towards trade union unity took place in September 1962 when an inter-union association was formed. This body set itself the task of co-ordinating and submitting to the Government all national claims. However, the various central offices which were part of the inter-union association remained independent and maintained their affiliation with their respective international trade union organization. The contacts made and upheld within the inter-union association gave rise on 9 March 1967 to the creation of the National Council of Trade Unions of the Congo (now Zaire) with the aim of achieving trade union unity.

A congress was held from 21 to 23 June 1967, resulting in the creation of the UNTC (National Union of Congolese Workers), which has today become the UNTZA (National Union of Zairian Workers).

As was noted above, freedom of association and all its attendant prerogatives are practised without any form of restraint from the public authorities. Once a trade union is constituted, it acquires legal status and can then legally carry out its activities. Public order is the only restriction which enables the authorities to keep a very discreet eye on the occupational associations. This is in keeping with article 26 (2) of the Constitution.

2. THE RIGHT TO STRIKE

Article 27 of the Constitution proclaims in its last paragraph that the workers have the right to strike provided that that right is used in the context of trade union activity and in accordance with the laws.

Civil servants who benefit from trade union rights and are affiliated to the Union of Zairian Workers (UNTZA) have the right to strike.

However, the exercise of this right shall not compromise the operation of vital public services which must not be interrupted (articles 56 and 57 of the Statutes of the Permanent Staff of the State Public Services).

It is therefore obvious that members of the armed forces, the police force, magistrates and officials of the public administration cannot stop work as a means of exerting pressure in order to obtain an advantage.

Other categories of workers have the right to strike as governed by the provisions of articles 213 to 223 of the Labour Code. However, this right must be exercised in conformity with the conditions and procedures laid down in those articles.

At Kinshasa, bank workers and employees of the National River Transport Office (ONATRA) quite recently availed themselves of the right to strike. Note should be taken of the conciliation effort to solve collective disputes and thus avoid the crisis of a strike, as provided for in the procedure laid down in articles 213 et seq.

As a result of this machinery for conciliation and permanent dialogue between management and labour, there are very few strikes in Zaire.

ARTICLE 9: RIGHT TO SOCIAL SECURITY

The right to social security is exercised in the context of the National Social Security Institute (INSS). This body has the status of a public institution and manages and distributes all social benefits. All public or private employers are obliged to declare their staff to the Institute and enrol them in it. Each employer is required to pay a contribution to this body, to which he also pays a proportion of each worker's remuneration, deducted at source. Such payments are made monthly.

A worker whose employer has fulfilled his obligations towards the INSS may, if the event covered takes place, avail himself of his right to payment of the sum of money provided for the purpose. This is so in the case of pensions, illness, invalidity, old age, industrial accident or any other insured social risk which has given rise to the payment of an insurance premium contributed to the INSS in conformity with the conditions provided for in the statutes of that body.

Although it is compulsory for all employers to declare their staff to the INSS and to enrol them in it, it is not uncommon to find employers who evade this duty. Irresponsible behaviour of this nature is most certainly damaging to the workers' interests since they would not then benefit from any social security measure. Because of the factors already mentioned it is difficult to keep check of cases in which the law is evaded or not applied in a country of Zaire's size.

It is also generally to be regretted that the very modest sums paid by the INSS are not sufficient to meet the cost of living. This is notably the case of the monthly payments to workers as a pension or to widows as an allowance.

Note

1/ Nouvelles juridiques, revue du Barreau de Lubumbashi, No. 1, July-August 1986, pp. 29-37. Revue juridique du Zaïre, January-December 1986, Nos. 1-2 and 3. R.C. 1670, Tribunal de grande instance, Lumbumbashi, 24 April 1984.

Annex

Reference documents */

I. Labour Code

II. Labour Code: Measures of Implementation

*/ These documents, submitted by the Government of Zaire in French, may be consulted at the Centre for Human Rights of the United Nations Secretariat.